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7 JOEY L. HAINES,  
8 Plaintiff,  
9 v.  
10 SHERIFF SANCHEZ, et al.,  
11 Defendants.

Case No. [23-cv-04452-AMO](#) (PR)

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28 **ORDER DIRECTING PLAINTIFF TO  
SHOW CAUSE WHY HIS FEDERAL  
CLAIM SHOULD NOT BE DISMISSED  
AS UNEXHAUSTED**

**I. INTRODUCTION**

This suit was reassigned from a magistrate judge to the undersigned in light of Ninth Circuit authority.<sup>1</sup> Plaintiff Joey L. Haines, who is in custody at the Santa Rita Jail (“SRJ”), filed the present *pro se* prisoner complaint under 42 U.S.C. § 1983.

The Court now conducts its initial review of the complaint pursuant to 28 U.S.C. § 1915A. Venue is proper because the events giving rise to Haines’s claims in his complaint are alleged to have occurred at SRJ, which is located in this judicial district. *See* 28 U.S.C. § 1391(b).

**II. DISCUSSION**

**A. Standard of Review**

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). *Pro se*

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<sup>1</sup> *Williams v. King*, 875 F.3d 500, 503 (9th Cir. 2017) (concluding that magistrate judge lacked jurisdiction to dismiss case on initial screening because unserved defendants had not consented to proceed before a magistrate judge).

1 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
2 Cir. 1990).

3 The Prison Litigation Reform Act of 1995 (“PLRA”) amended 42 U.S.C. § 1997e to  
4 provide that “[n]o action shall be brought with respect to prison conditions under [42 U.S.C.  
5 § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional  
6 facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).  
7 Exhaustion is mandatory and no longer left to the discretion of the district court. *Ross v. Blake*,  
8 136 S. Ct. 1850, 1856-58 (2016); *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (citing *Booth v.*  
9 *Churner*, 532 U.S. 731, 739 (2001)). “Prisoners must now exhaust all ‘available’ remedies, not  
10 just those that meet federal standards.” *Id.* at 85. Even when the relief sought cannot be granted  
11 by the administrative process, i.e., monetary damages, a prisoner must still exhaust administrative  
12 remedies. *Id.* at 85-86 (citing *Booth*, 532 U.S. at 734).

13 **B. Legal Claims**

14 Haines alleges a claim for violations of his Eighth Amendment rights, stemming from an  
15 incident on January 5, 2023 related to a claim of deliberate indifference to his safety. See Dkt. 1 at  
16 2-3. However, a review of the complaint reveals that Haines has not exhausted California’s prison  
17 administrative process and thus it must be dismissed.

18 The California Department of Corrections and Rehabilitation (“CDCR”) provides that  
19 inmates and parolees “may appeal any policy, decision, action, condition, or omission by the  
20 department or its staff that the inmate or parolee can demonstrate as having a material adverse  
21 effect upon his or her health, safety, or welfare.” Cal. Code Regs. tit. 15, § 3084.1(a). Section  
22 1997e(a) requires “proper exhaustion” of available administrative remedies. *Ngo*, 548 U.S. at 93.  
23 A prisoner not only must pursue every available step of the prison appeal process but also must  
24 adhere to “deadlines and other critical procedural rules” of that process. *Id.* at 90.

25 Here, Haines fails to allege that he exhausted his administrative remedies for the federal  
26 claims he seeks to assert. Dkt. 1 at 2-3. Specifically, he states that he received “no response” to  
27 the “[s]econd formal level” of review. *Id.* at 2. Moreover, Haines did not attach any prison  
28 grievance forms. Thus, the Court has no additional basis to assess whether he exhausted his

1 admirable remedies prior to filing his suit. Furthermore, he has not presented any extraordinary  
2 circumstances which might compel that he be excused from complying with PLRA's exhaustion  
3 requirement. *Cf. Booth*, 532 U.S. at 741 n.6 (courts should not read "futility or other exceptions"  
4 into section 1997e(a)).

5 A prisoner must exhaust his administrative remedies for constitutional claims *prior to*  
6 asserting them in a civil rights complaint. 42 U.S.C. § 1997e(a); *McKinney v. Carey*, 311 F.3d  
7 1198, 1199 (9th Cir. 2002). If a prisoner exhausts a claim *after* bringing it before the court, his  
8 subsequent exhaustion cannot excuse his earlier failure to exhaust. *Vaden v. Summerhill*, 449 F.3d  
9 1047, 1051 (9th Cir. 2006) ("[A prisoner] may initiate litigation in federal court only after the  
10 administrative process ends and leaves his grievances unredressed. It would be inconsistent with  
11 the objectives of the statute to let him submit his complaint any earlier than that.") When the  
12 district court concludes that the prisoner has not exhausted administrative remedies on a claim,  
13 "the proper remedy is dismissal of the claim without prejudice." *Wyatt v. Terhune*, 315 F.3d,  
14 1108, 1120 (9th Cir. 2003) *overruled on other grounds by Albino v. Baca*, 747 F.3d 1162, 1166  
15 (9th Cir. 2014) (en banc). However, the Court will provide Haines one final opportunity to show  
16 cause, within **twenty-eight (28) days**, why his federal claim should not be dismissed without  
17 prejudice for failure to exhaust, as instructed below. Specifically, to avoid dismissal, Haines  
18 needs to provide proof that extraordinary circumstances existed in order to excuse him from  
19 complying with PLRA's exhaustion requirement. *See e.g., Ross*, 136 S. Ct. at 1859-60  
20 (identifying "three kinds of circumstances in which an administrative remedy, although officially  
21 on the books, is not capable of use to obtain relief.")

### 22 III. CONCLUSION

23 For the foregoing reasons, the Court orders as follows:

24 1. Haines will be provided one final opportunity to show cause within **twenty-eight**  
25 **(28) days**, why his federal claim should not be dismissed without prejudice for failure to exhaust.  
26 **Failure to reply will result in dismissal without prejudice of Haines's federal claim.**

27 2. All communications by Haines with the Court must be served on the defendants'  
28 counsel by mailing a true copy of the document to them.

1       3. It is Haines's responsibility to prosecute this case. He must keep the Court  
2 informed of any change of address and must comply with the Court's orders in a timely fashion.  
3 Pursuant to Northern District Local Rule 3-11, a party proceeding *pro se* whose address changes  
4 while an action is pending must promptly file a notice of change of address specifying the new  
5 address. *See* L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: (1) mail  
6 directed to the *pro se* party by the Court has been returned to the Court as not deliverable, and  
7 (2) the Court fails to receive within sixty days of this return a written communication from the *pro*  
8 *se* party indicating a current address. *See* L.R. 3-11(b).

9           4. Upon a showing of good cause, requests for a reasonable extension of time will be  
10 granted provided they are filed on or before the deadline they seek to extend.

## **IT IS SO ORDERED.**

12 || Dated: January 9, 2024

Araceli Martínez  
ARACELI MARTÍNEZ-OLGUÍN  
United States District Judge